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C O N F I D E N T I A L SECTION 01 OF 03 PRETORIA 000177

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SUBJECT: MOTOROLA CONCERNED ABOUT LACK OF DUE PROCESS IN
SOUTH AFRICAN POLICE SERVICE TENDER

Classified By: Economic Counselor Perry Ball. Reasons 1.4(b) and (d)

¶1. (C) Summary. Motorola is concerned that a South African Police Service (SAPS) tender for the acquisition of a provincial radio network system did not follow due process. The company has solicited USG support to seek clarification of the process to ensure transparency in future tenders. End Summary.

¶2. (C) Motorola executives are concerned about alleged irregularities in a South African Police Service (SAPS) tender for a new emergency radio communications network system for Eastern Cape Province worth R900 million (USD \$90 million). The executives met with Commercial Service Officers and State ICT officer on January 16 to discuss the tender, which was awarded to a French/South African bidder in December.

¶3. (U) SAPS has embarked on a strategy to implement tetra digital radio network systems at the provincial level and to ultimately link them into a national network. The individual tenders call for the supply, delivery, installation, and commissioning of new tetra digital radio network systems at the provincial level. Gauteng Province was the first province to contract and implement the system. A Motorola partner won the first tender for Gauteng. Eastern Cape Province was the second to tender with additional tender announcements expected shortly for KwaZulu-Natal and the Western Cape Provinces.

MOTOROLA CONCERNED THAT DUE
PROCESS WAS NOT FOLLOWED

¶4. (C) Motorola's South African partner Alcom and French-based EADS's South African partner Integcomm Limited were the two short-listed candidates for the tender. Alcom is a subsidiary of Allied Technology (Altech), which has successfully pursued a series of legal cases against the South African Government to increase competitiveness in the ICT sector (Reftel A). Motorola executives were perplexed that the final award was made to Integcomm even though the tender evaluation committee favored the Alcom bid for technical reasons, and despite the fact that the tender was publicly cancelled due to disagreements between the tender evaluation and management committees.

DISAGREEMENT BETWEEN BID EVALUATION
AND MANAGEMENT COMMITTEES

¶5. (C) Motorola told post that the tender bid evaluation committee initially recommended Alcom/Motorola, only to be overruled by the management committee in favor of

Integcomm/EADS. Under these circumstances, SAPS tender procedures require the evaluation committee to re-evaluate its recommendation. The procedures do not allow the management committee to overturn the results of a second evaluation.

¶6. (C) According to Motorola, the evaluation committee continued to recommend the Alcom bid after the second review for technical merits. However, the subsequent recommendation was not accepted by the management committee either. The SAPS tender process calls for the cancellation of a tender in cases where agreement cannot be reached between the two committees after two consecutive reviews. The procedures then require the tender process to be restarted with a new publicly announced tender before an award can be made. Proper procedures were followed until this point. SAPS cancelled the tender through a government bulletin in October.

¶7. (C) All of the original bidders expected the tender process to restart with a new public gazette notice and tender. However, the original bid was reinstated without an accompanying public announcement and awarded to Integcomm on December 12. The SAPS tender procedures require it to follow any tender cancellation with either a new publicly announced tender or a public reinstatement of the original tender, which did not occur in this case.

TECHNICAL MERITS OF
ALCOM/MOTOROLA BID

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¶8. (C) Motorola believed that the Alcom/Motorola bid was favored by the evaluation committee for technical merits and ease of interoperability. Executives speculated that the management committee could have overruled the evaluation committee out of ignorance if they did not understand the requirements for intersystem interoperability. (Note: SAPS would like to link all of the provincial networks into one national emergency communications network. However, if SAPS selects different technologies (i.e. Motorola versus EADS radio technology) it will only be able to develop a national network with very limited interoperability. End Note.)

EADS PARTNER WINS BID DESPITE
IRREGULARITIES IN PROCESS

¶9. (C) Motorola executives observed that irregularities began to occur soon after the tender was cancelled in October. The SAPS bid management committee had sent private notification letters to only the original two short-listed candidates (Integcomm and Alcom) asking them whether they would consider accepting the terms of the original bids if it could be reinstated. The letter noted that the SAPS National Commissioner would have to approve and publicly announce the reinstatement of the original tender. According to Motorola executives, the letter did not clarify dates or the legal terms for reinstating the cancelled tender.

¶10. (C) Alcom replied to the private notification letter with a bid and Motorola sought clarification on the dates. Motorola executives speculated that EADS also replied positively to the letter. Alcom/Motorola did not receive any response or clarifications on the timing and was shocked when SAPS announced the award to Integcomm without publicizing the formal approval to reinstate the original tender.

CAUSE FOR IRREGULARITIES UNCLEAR

¶11. (C) Motorola executives were perplexed at the irregularities and award announcement and speculated that there could have been a number of political or strategic causes for the decision in favor of the EADS partner. These include: (1) negative publicity for the Motorola-based network in Gauteng; (2) political maneuverings by SAPS National Commissioner Jacob "Jackie" Selebi; (3) intense EADS/French lobbying; (4) SAG annoyance with Altech; and (5) favoritism for a particular BEE partner.

¶12. (C) They emphasized that the SAPS National Deputy Commissioner and tender process were "above board" for the first tender for Gauteng province. However, the Gauteng system had received negative press coverage due to problems with SAPS implementation. According to Motorola executives, the press often confused poor SAPS management/implementation with problems with the Motorola product in its reporting. They believed that this could have tainted the Deputy Commissioner's perception of the Alcom/Motorola bid. Alternatively, Integcomm/EADS could have been selected to ensure that SAPS was not completely reliant on only one supplier.

¶13. (C) The executives speculated (without offering evidence) that suspended SAPS National Commissioner Jacob Selebi "might be pulling strings from the background." (Note: Selebi is currently on extended "special" leave after being charged with corruption. His corruption trial is expected to start in April. The new Minister for Safety and Security Nathi Qin April. The new Minister for Safety and Security Nathi Mthethwa has written to President Mthlanthe urging Selebi's dismissal.) They noted that Selebi has strong French connections developed during his time in Paris with Interpol. They also believed that he had pushed strongly for the EADS partner in the first Gauteng tender process, but was thwarted by the Deputy Commissioner's insistence on due process.

¶14. (C) The executives also speculated that their choice of partnering with Alcom could have adversely affected the outcome. Alcom's parent company Altech has recently won a series of highly-publicized legal cases against the SAG to increase market competition. There is a possibility that this could have affected the decision. However, Motorola executives thought it was more likely that Black Economic Empowerment (BEE) politics hindered the chances of the Alcom/Motorola bid, as Alcom's BEE partner was a strong

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supporter of former President Mbeki. They thought that the shift in power in the African National Congress (ANC) last fall could have affected Alcom's bid.

RECOURSE OPTIONS

¶15. (C) Executives noted that EADS has lost a series of bids to Motorola radio systems throughout the European Union, which has led EADS to become more aggressive in the Middle East/Africa market. They expected EADS to lobby SAPS to finalize the award and sign contracts quickly before other parties had a chance to dispute the irregularities in the tender announcement. Therefore, Alcom and Motorola would like to move quickly to dispute the award. Alcom plans to pursue domestic channels for dispute resolution and supported Motorola plans to enlist USG assistance. Motorola executives are concerned that EADS enjoys the strong support of French government lobbying efforts (all the way to President Sarkozy's level) for its initiatives.

¶16. (C) Motorola executives were hesitant to directly confront SAPS regarding the discrepancies in the bidding process. They explained that Motorola was only a 30-35 percent partner in this particular bid and they did not want

to jeopardize its chances for future SAPS bids for networks in other provinces. However, they were also concerned about transparency in future SAPS tenders. They would like to get a sense of whether EADS is being favored politically, or if Altech is being disfavored for BEE or other reasons. This would allow Motorola to reevaluate its partnership strategy for future tenders.

¶17. (C) Senior Commercial Officer agreed that the best strategy would be to request a meeting with SAPS to seek clarification of the tender process without directly disputing the outcome. Motorola executives also explained that ANC President Zuma personally offered to introduce them to senior SAG leadership during a recent visit to Washington. Motorola leadership was not sure if the company should take up Zuma's offer, considering the corruption charges surrounding him. Motorola executives and U.S. Commercial and State ICT Officers decided that the best initial strategy was to get top leadership at Motorola and the Embassy engaged to see whether SAPS could justify its decision and what on grounds it based its actions.

¶18. (C) Post is trying to secure meetings for Motorola executives with officials at the Department of Safety and Security. Post had also sent letters to the Acting National Commissioner of SAPS requesting a meeting to seek clarification on the tender process. SAPS National Commissioner's Officer has responded to the letter, but has denied the request for the meeting. SAPS cited the pending Alcom legal dispute for the denial. (Note: Alcom decided to pursue domestic legal recourse shortly after our meeting with Motorola.)

¶19. (C) Comment: Motorola cited a laundry list of possible causes for the irregularities in the SAPS Eastern Cape Province tender-bidding process. Any of the factors they cited could have feasibly played a role in the tender announcement in favor of EADS/Integcomm. The exact causes of the irregularities are unclear at this point, but it does appear that SAPS' written procedures for tender procurement were not adhered to. Post will continue to work with Motorola to seek clarification from SAPS on the matter. End Comment.
BALL